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TELECOMMUNICATIONS CONSULTANT  
HON. ROBERT E. LEE

WRITER'S NUMBER  
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November 14, 1990

RECEIVED

NOV 14 1990

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Federal Communications Commission  
Office of the Secretary

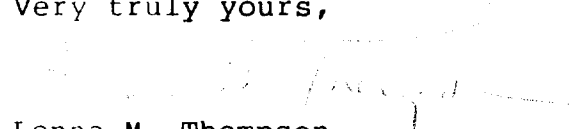
Re: Valley Public Television, Inc.  
File No. BPET-900904KF  
Bakersfield, California

Dear Ms. Searcy:

Transmitted herewith, on behalf of Valley Public Television, Inc., applicant for a construction permit for a new noncommercial educational television station on Channel \*39 at Bakersfield, California, are an original and four copies of its "Amendment and Request for Waiver" in the above-referenced matter. A Petition for Leave to Amend is being transmitted simultaneously herewith.

Should any questions arise concerning this matter, please communicate with this office.

Very truly yours,

  
Lonna M. Thompson  
Counsel for  
Valley Public Television, Inc.

LMT/mac  
Enclosures



ORIGINAL

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AMENDMENT

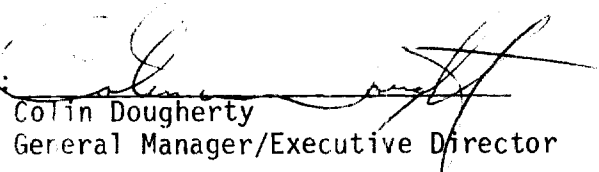
Federal Communications Commission  
Office of the Secretary

RE: Valley Public Television, Inc.  
Application for Construction Permit  
New Non-Profit Educational Television Station  
Channel 39  
Bakersfield, California

File #: BPET 900904KF

Valley Public Television, Inc. hereby amends its application to include the attached "Request for Waiver" of Section 73.610 of the FCC's rules.

Signed:

  
Colin Dougherty  
General Manager/Executive Director

Dated:

Nov-6<sup>th</sup> 1990

VALLEY PUBLIC TELEVISION, INC.

10/11/90

Memorandum

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Federal Communications Commission  
Office of the Secretary

Valley Public Television, Inc.  
Application for a Construction Permit for  
a New Noncommercial Educational  
Television Station on  
Channel \*39, Bakersfield, California  
File No. BPET-900904KF

REQUEST FOR WAIVER

Valley Public Television, Inc. ("Valley") requests a waiver  
of Sections 73.610 and 73.698 of the Commission's Rules  
regarding the mileage separation between the reference point

As the attached engineering statement of Moffet, Larson & Johnson, Inc. demonstrates, there are numerous locations in the hills to the east which overlook Ridgecrest and in which a Channel \*25 facility could be located without any resultant short-spacing between the Channel \*25 and Valley's proposed Channel \*39 station. Additionally, should Channel \*41 be dropped into Ridgecrest as a result of the final outcome of MM Docket No. 85-390, there are also many locations at which a station on Channel \*41 could operate without any short-spacing problems to Valley's proposed Channel \*39 facilities.<sup>2/</sup>

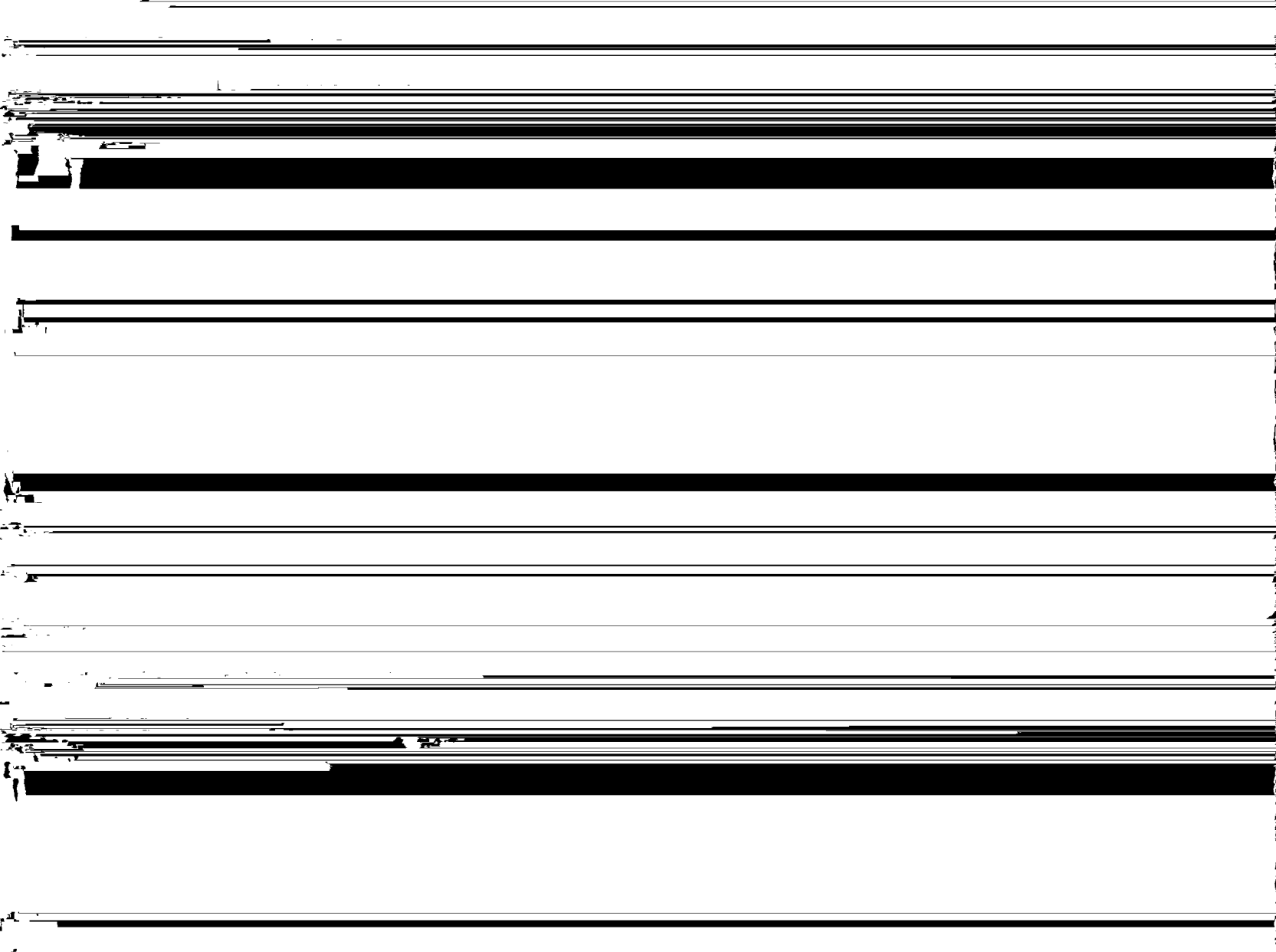
Valley was not aware of any short-spacing question at the time it filed its Channel \*39 application. Valley chose to locate at Breckinridge Mountain at the coordinates specified in its Channel \*39 application in order to be at an existing antenna farm so as to avoid any receiving antenna orientation problems, to achieve maximum coverage, and also to achieve substantial savings in costs, which is a very important consideration to a noncommercial station. Indeed, Valley's coverage, as compared to that proposed in the mutually exclusive application for Channel \*39 of Community Television of Southern California ("Community"), shows that Valley would reach

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<sup>2/</sup> Notice of Proposed Rule Making, MM Docket No. 85-390, 50 Fed. Reg. 52806, published December 26, 1985; Report and Order, MM Docket No. 85-390, FCC 87-297, released September 30, 1987, reconsideration pending. There is confusion as to whether Ridgecrest eventually will be allocated Channel \*25 or \*41 as evinced by the engineering exhibit (page 1) of Community Television of Southern California's Channel \*39 application which analyzes "Channel 40" [sic] at Ridgecrest.

421,000 persons and cover an area of 12,370 sq. km., as opposed to Community's proposed facilities which would serve 332,293 persons and cover an area of 8,932 sq. km. Valley's coverage would provide 88,707 persons and an area of 3,438 sq. km. more service than would the opposing application, including areas and persons now largely unserved by an educational television station.

Although there are inferior sites that are not short spaced, Valley submits that this fact must be analyzed in light



Telecasting, Inc., 49 R.R.2d 1688 (1981), the Commission found that the public interest required waiver of the short-spacing of a proposed new site of an existing station that would be mutually exclusive with the proposed site of another existing station even though fully spaced sites were available because the short-spaced proposal would give many more persons their first non-network commercial signal as compared to those who would lose their only such service.

In KXO, Inc., 6 R.R.2d 834 (1966), a station filed a mileage separation waiver where its transmitter location would be short-spaced by 20 miles to a co-channel facility. The Commission granted the waiver because it would not result in a diminution of service to any area, and, instead, would have the positive effect of providing service to more people in an area within its proposed Grade B contour of 9,123 square miles (containing 23,365 people). Similarly, in The Outlet Co., 12 R.R.2d 387 (1968), a station applied for a short-spacing waiver in order to change its antenna site which would be short-spaced to a co-channel facility by 6 miles. The Commission granted the waiver because of the improvement of the station's signal.

Similarly, Valley has proposed facilities that will serve a greater number of persons who would not receive service from a fully spaced site. In Valley's case, a vacant allocation is involved, so no service loss whatsoever would occur. Moreover, the public interest would be served by grant of the waiver request to allow Valley to compete to extend its service into

the Bakersfield area for reception by persons currently deprived of Valley's signal due to mountain and coastal ranges. Included among these persons would be at least 150,000 persons who currently do not receive an off-the-air noncommercial educational service.<sup>4/</sup> Additionally, Valley's proposed facilities would allow maximum coverage of the Bakersfield area.

Further, in evaluating the other factors the Commission analyzes in granting short-spacing waivers, Valley has shown good cause for a waiver.<sup>5/</sup> First, the magnitude of the short spacing would be small, less than 10 square kilometers.<sup>6/</sup> Secondly, there will be no predicted loss of service, because there is no existing service on Channel \*25, and, therefore, no concern of the effect on an existing licensee or permittee. Third, there are no environmental concerns; in fact, location of Valley's facilities at an existing antenna farm would actually benefit the environment. Lastly, Valley's site is superior to any other for the purpose of bringing an off-the-air educational

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4/ See July 25, 1990 Letter from Roy J. Stewart, Chief, Mass media Bureau, to Community Television of Southern California, page 3.

5/ See, e.g., Caloosa, 64 R.R.2d at 1642-1643, for list of relevant factors, including: (1) unsuitability of current site or no available fully spaced sites, (2) extent of spacing shortfall, (3) extent of loss of service to persons served at current site, (4) environmental considerations, (5) concerns of licensee to which short spacing would occur, and (6) the extent to which existing licensees' spacing constraints knowingly existed.

6/ See, e.g., Clay Broadcasting Corp., 50 R.R.2d 1273, recon. denied, 51 R.R.2d 916 (1982) (approval of 5 mile shortfall out of 190 mile distance required).

television signal by an overwhelming margin. Clearly, Valley has met its threshold burden of establishing good cause for a grant of the requested waiver.

As the Commission's files will amply demonstrate, Valley has been trying for the last several years to obtain an authorization to serve the Bakersfield area, not only by applying for Channel \*39 but also through two television translator applications. In each and every case, Valley's efforts to provide such service have been frustrated and delayed through filings of Community Television of Southern California, the competing applicant for Channel \*39 and the sole objector to Valley's application. Valley's dedicated efforts should not be stopped because of the short-spacing when, in fact, there is no station operating on Channel \*25, nor has there been any interest shown by anyone to operate on Channel \*25 in the last 25 years since its allotment.<sup>7/</sup>

Further, Commission policy favors granting the Valley qualifying amendment and waiver request in order to allow Valley to compete as an applicant to determine the best licensee. See Azalea Corp., et al., 31 F.C.C.2d 561, 563 (1971) ("Since the public interest is best served by having as many qualified applicants as possible competing for each broadcast facility, it

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<sup>7/</sup> In the case of Mary R. Krupis and WLOS-TV, Inc., released April 12, 1990 (FCC 90-131), the Commission noted that where a "frequency lies fallow" the FCC should "reallocate that channel for other uses." Clearly, a "fallow" channel should not block a viable utilization of a channel in the manner proposed by Valley.



has long been Commission policy to permit an applicant to remove a disqualifying factor through amendment during hearing"); see also Anax Broadcasting, 87 F.C.C.2d 483, 489 (1981) ("due diligence requirement should be interpreted in light of the equities of the case, especially where a proffered amendment is intended to cure a disqualifying defect").

Wherefore, Valley requests a waiver of Sections 73.610 and 73.698 of the FCC Rules to allow it to locate its facilities on Channel \*39 short-spaced to the theoretical reference point of Channel \*25.

ENGINEERING REPORT

**MOFFET, LARSON & JOHNSON, INC.**

5203 LEESBURG PIKE

CONSULTING TELECOMMUNICATIONS ENGINEERS

FALLS CHURCH, VA 22041

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ENGINEERING EXHIBIT

IN SUPPORT OF THE APPLICATION BY

VALLEY PUBLIC TELEVISION, INC.

FOR A

NON-COMMERCIAL BROADCAST STATION

IN

BAKERSFIELD, CALIFORNIA

FCC FILE NUMBER BPET-900904KF

November 5, 1990

**MOFFET, LARSON & JOHNSON, INC.**

5203 LEESBURG PIKE

CONSULTING TELECOMMUNICATIONS ENGINEERS

FALLS CHURCH, VA 22041

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Valley Public Television, Inc.  
Bakersfield, California

**ENGINEERING STATEMENT**

This Engineering Exhibit has been prepared on behalf of Valley Public Television, Inc. (VPT), an applicant for a new non-commercial broadcast station in Bakersfield, California (FCC File Number BPET-900904KF), in support of a request for waiver of Paragraph 73.610 and Paragraph 73.698, Table II of the FCC Rules.

The proposed VPT transmitter site is 9.8 kilometers short-spaced to the city reference coordinates of an unused Channel \*25 allotment at Ridgecrest, California. Exhibit 1 is an allocation study for Channel \*25 at Ridgecrest, California. Exhibit 2 shows the permissible site area for the Channel \*25 allotment and the restriction that the VPT proposal would place on the Channel \*25 site area. As shown on Exhibit 2, grant of the VPT proposal would not preclude the use of Channel \*25 at Ridgecrest and an ample permissible site area would remain to the east of Ridgecrest.

Exhibit 3 is an allocation study for Channel 41 at Ridgecrest, California which would be available for use at the Ridgecrest city reference coordinates.

Moffet, Larson, & Johnson, Inc.

Page: 1

Date: 11/05/90

Study Name : Ridgecrest, California

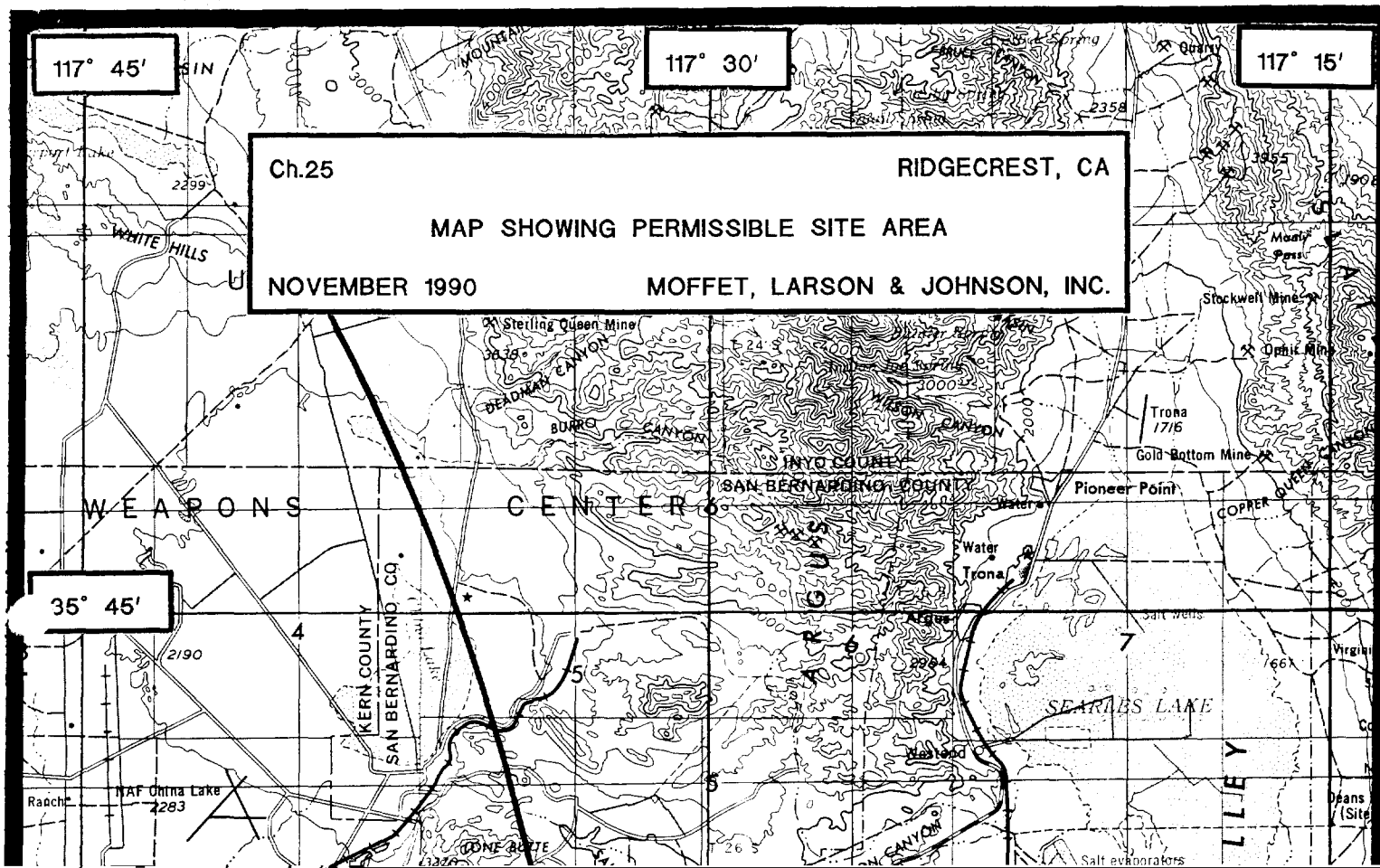
Channel : 25n

Coordinates : N 35 37 30.0 W 117 40 12.0

Separations : TV Zone 2 - Full Service

Call	City	&	State	Stat	File - number	Chan	ERP	HAAT	Zn	Latitude	Longitude	Bear	Dist	Req'd	Clear
--- kilometers ---															
KGET	BAKERSFIELD		CA	LIC	BLCT 790529KF	17z	5000	1400	2 35 26	20.0 118 44	23.0 258.2	99.19	31.4	67.79	
KSCI	SAN BERNARDINO		CA	LIC	BLCT 2579	18-	3334	2380	2 34 11	15.0 117 41	53.5 180.9	159.49	95.7	63.79	
KEROTV	BAKERSFIELD		CA	LIC	BMLCT 305	23-	1760	3700	2 35 27	14.0 118 35	37.0 257.4	85.88	31.4	54.48	
	RIDGECREST		CA	ALC		* 25z			2 35 37	30.0 117 40	12.0 239.9	.00	280.8	-280.8	
KMPH	VISALIA		CA	LIC	BMLCT 781115KF	26+	2950	2730	2 36 17	12.0 118 50	20.0 305.3	128.49	87.7	40.79	
KMPH	VISALIA		CA	CPM	BMPCT 891114KE	26+	3214	2570	2 36 40	2.0 118 52	42.0 317.2	158.74	87.7	71.04	
KBAKTV	BAKERSFIELD		CA	LIC	BLCT 2317	29z	1700	3730	2 35 27	11.0 118 35	25.0 257.3	85.61	31.4	54.21	
NEW	BAKERSFIELD		CA	APP	BPET 900904KF!	* 39-	162	3596	1 35 27	14.0 118 35	37.0 257.4	85.88	95.7	-9.82	
NEW	BAKERSFIELD		CA	APP	BPET 881012KE!	* 39-	310	1332	2 35 26	17.0 118 44	23.0 258.2	99.21	95.7	3.51	
	BAKERSFIELD		CA	ALC		* 39-			2 35 22	31.0 119 1	16.0 257.6	125.68	95.7	29.98	
KTBNV	SANTA ANA		CA	LIC	BLCT 830418KH	40z	631	2890	2 34 13	27.0 118 3	44.0 193.0	159.48	119.9	39.58	

EXHIBIT 1



Moffet, Larson, & Johnson, Inc.

Page: 2

Date: 11/05/90

Study Name : Ridgecrest, California

Channel : 41n

Coordinates : N 35 37 30.0 W 117 40 12.0

Separations : TV Zone 2 - Full Service

Call	City	&	State	Stat	File - number	Chan	ERP	HAAT	Zn	Latitude	Longitude	Bear	Dist	Req'd	Clear
--- kilometers ---															
D86-172	LOS ANGELES		CA	PADD		26z				1 34 3 15.0	118 14 28.0	196.8	181.92	119.9	62.02
KMPH	VISALIA		CA	LIC	BMLCT 781115KF	26+	2950	2730	2 36 17 12.0	118 50 20.0	305.3	128.49	119.9		8.59
KMPH	VISALIA		CA	CPM	BMPCT 891114KE	26+	3214	2570	2 36 40 2.0	118 52 42.0	317.2	158.74	119.9		38.84
KMEXTV	LOS ANGELES		CA	LIC	BLCT 790118LF	34z	1950	2940	2 34 13 35.0	118 3 56.0	193.2	159.31	95.7		63.61
NEW	BAKERSFIELD		CA	APP	BPET 900904KF!	* 39-	162	3596	1 35 27 14.0	118 35 37.0	257.4	85.88	31.4		54.48
NEW	BAKERSFIELD		CA	APP	BPET 881012KE!	* 39-	310	1332	2 35 26 17.0	118 44 23.0	258.2	99.21	31.4		67.81
KTBNV	SANTA ANA		CA	LIC	BLCT 830418KH	40z	631	2890	2 34 13 27.0	118 3 44.0	193.0	159.48	87.7		71.78
	YOSEMITE VALLEY		CA	ALC		41z			2 37 44 42.0	119 35 12.0	324.6	291.02	280.8		10.22
KDOBTv	BAKERSFIELD		CA	LIC	BLCT 881229KF	45+	5000	1325	2 35 26 20.0	118 44 24.0	258.2	99.22	31.4		67.82
KDOCTv	ANAHEIM		CA	LIC	BLCT 821028KF	56-	2820	2390	2 34 11 14.0	117 42 1.0	181.0	159.52	119.9		39.62

EXHIBIT 3

MOFFET, LARSON & JOHNSON, INC.

FALLS CHURCH, VA 22041

A F F I D A V I T

That he has either prepared or directly supervised the preparation of all

## MOFFET, LARSON &amp; JOHNSON, INC.

5203 LEESBURG PIKE

CONSULTING TELECOMMUNICATIONS ENGINEERS

FALLS CHURCH, VA 22041

Valley Public Television, Inc.  
Bakersfield, California

A F F I D A V I T

COUNTY OF FAIRFAX                    )  
                                          ) SS:  
COMMONWEALTH OF VIRGINIA        )

WALLACE E. JOHNSON, being duly sworn upon oath deposes and says:

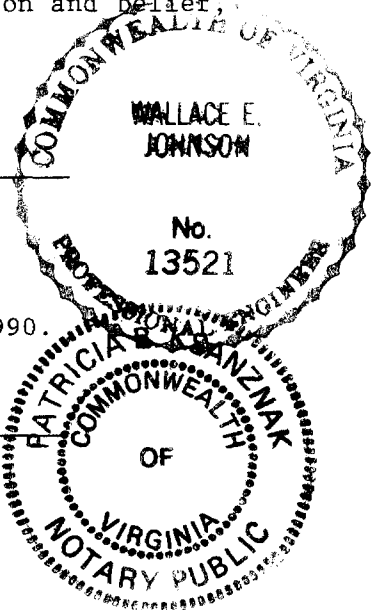
That his qualifications are a matter of record with the Federal Communications Commission;

That he is a registered professional engineer in the Commonwealth of Virginia and the District of Columbia and is the President of the firm of Moffet, Larson & Johnson, Inc.;

That this firm has been retained by Valley Public Television, Inc. to prepare this engineering statement;

That he has either prepared or directly supervised the preparation of all technical information contained in this engineering statement; and that the facts stated in this engineering statement are true of his knowledge, except as to such statements as are herein stated to be on information and belief, and as to such statements he believes them to be true.

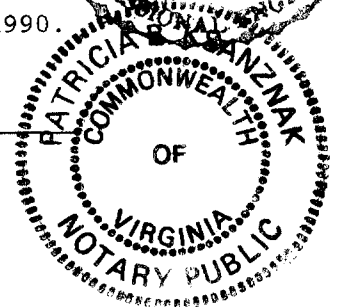
Wallace E. Johnson  
Wallace E. Johnson



Subscribed and sworn to before me this 5th day of November, 1990.

Patricia B. Krynak  
Notary Public

My Commission expires September 13, 1991.





CERTIFICATE OF SERVICE

I, Marnette Clemons, a secretary in the law firm of Fletcher, Heald & Hildreth, do hereby certify that true copies of the foregoing "Amendment and Request for Waiver" were sent this 14th day of November, 1990, by first-class United States mail, postage prepaid, to the following:

\*Mr. Clay Pendarvis  
Chief, Television Branch  
Mass Media Bureau  
Federal Communications Commission  
Room 700  
1919 M Street, N.W.  
Washington, D.C. 20554

Theodore D. Frank, Esquire  
Peter Tannenwald, Esquire  
Arent, Fox, Kintner, Plotkin  
& Kahn  
1050 Connecticut Avenue, N.W.  
Suite 600  
Washington, D.C. 20036  
Counsel for Community Television  
of Southern California, Inc.

\*By Hand

  
Marnette Clemons